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OFFICE OF PETITIONS

In re Application of
MEYER et al.

Application No. 09/074,544

Filed: May 8, 1998

Attorney Docket No. P2248-000472

DECISION ON PETITION

This is a decision on a renewed petition, filed April 5, 2007, which is being treated as a petition under 37 CFR 1.181 (no fee); requesting withdrawal of the holding of abandonment in the above-identified application.

The petition is **GRANTED**.

This application became abandoned as a result of petitioner's purported failure to take appropriate action in a timely manner after the decision of July 26, 2004 by the Board of Patent Appeals and Interferences. The proceedings as to the rejected claims were supposedly terminated under 37 CFR 1.197(b), and, as no claim was allowed, the application allegedly became abandoned on September 27, 2004.

Petitioner states that a reply was, in fact, timely filed. To support this assertion, petitioner has submitted a copy of a return postcard which acknowledges receipt by the U.S. Patent and Trademark Office (USPTO) on September 27, 2004 (September 26, 2004 being a Sunday) of, *inter alia*, a Request for Continued Examination (RCE) and a submission in the form of an amendment. A copy of the previously submitted reply accompanies the instant petition. The Office also acknowledges the RCE fee charged in September 2004.

The RCE and the amendment acknowledged as having been received in the USPTO on September 27, 2004 are not of record in the application file and have not to date been located. However, MPEP 503 states "[a] post card receipt which itemizes and properly identifies the papers which are being filed serves as *prima facie* evidence of receipt in the USPTO of all the items listed thereon on the date stamped thereon by the USPTO." Accordingly, it is concluded that the amendment and RCE were timely received in the USPTO but lost after receipt thereof.

Additionally, even after a Board's decision and when prosecution is closed, MPEP 1214.07 explains that, "if the amendment is submitted with a request for continued examination (RCE) under 37 CFR 1.114 and the fee set forth in 37 CFR 1.17(e), prosecution of the application will

be reopened and the amendment will be entered.” See also 37 CFR 1.198 and MPEP 706.07(h)(XI). Accordingly, petitioner has provided sufficient evidence that a timely and appropriate response was filed after the decision by the Board of Patent Appeals and Interferences in order to reopen prosecution.

In view of the above, the holding of abandonment is hereby withdrawn and the application restored to pending status.

The copy of the reply supplied with the petition will be accepted in place of the reply shown to have been received by the USPTO on September 27, 2004.

This application is being referred to Technology Center AU 2179 for appropriate action in the normal course of business on the reply received with petition.

Telephone inquiries relative to this decision should be directed to Denise Pothier at (571) 272-4787.



Frances Hicks
Lead Paralegal
Office of Petitions